



October 28, 2002

Mr. Richard L. Muller, Jr.
Vinson & Elkins
1001 Fannin Street, Suite 2300
Houston, Texas 77002-6760

OR2002-6090

Dear Mr. Muller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171285.

The Fort Bend County Child Advocates ("Child Advocates"), which you represent, received a request for (1) copies of the videotaped interviews of certain children; (2) any material related to these interviews; (3) the names of the employees involved in the case related to the children; and (4) a copy of the policies describing a counseling session. The requestor represents the parents of the children involved. You claim that you do not own or possess the requested videotapes and that you have no right to obtain them.¹ You assert that the material related to the videotaped interviews is confidential under sections 261.201 and 264.408 of the Family Code. You contend with respect to the request for the names of employees that you are not required to compile information or create documents under the Public Information Act. Lastly, you indicate that there is no information responsive to the

¹We note that section 264.408(d) of the Family Code states: "A videotaped interview of a child made at a center [established pursuant to chapter 264 of the Family Code] is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child. If no criminal prosecution occurs, the videotaped interview is the property of the attorney involved in representing the department in a civil action alleging child abuse or neglect. If the matter involving the child is not prosecuted, the videotape is the property of the department if the matter is an investigation by the department of abuse or neglect. If the department is not investigating or has not investigated the matter, the videotape is the property of the agency that referred the matter to the center. If the center employs a custodian of records for videotaped interviews of children, the center is responsible for the custody of the videotape. A videotaped interview may be shared with other agencies under a written agreement."

request for a copy of the policies describing a counseling session. We have considered your arguments and reviewed the submitted information.

You appear to contend that Child Advocates does not maintain information responsive to the request for the names of the Child Advocates employees involved in this case and that Child Advocates would have to either compile information or create new information in response to the request. The Act does not require a governmental body to make available information which does not exist nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 (1992), 555 (1990), 362 (1983). Nevertheless, Child Advocates must make a good-faith effort to relate the request to information that it holds or to which it has access. *See* Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990). The submitted information shows the Child Advocates employees who were involved in the case. Thus, Child Advocates has information responsive to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes such as section 264.408 of the Family Code which provides:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Fam. Code § 264.408. Thus, section 264.408 provides that certain information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Section 264.408 also explicitly provides for circumstances in which such confidential information may be disclosed. *See* Fam. Code § 264.408(a)(1), (2). You indicate that Child Advocates' Children's Advocacy Center is established pursuant to chapter 264 of the Family Code. Furthermore, you state that Children's Advocacy Center compiled the submitted information as a result of a January 2002 investigation of suspected child abuse. Based on your statements and our review of the information, we conclude that the submitted information is confidential under

section 264.408 of the Family Code. Furthermore, it does not appear that the provisions allowing for the disclosure of this information apply to this requestor. *See* Fam. Code § 264.408(a)(1), (2). Therefore, Child Advocates must withhold the submitted information under section 552.101 of the Government Code. Because section 264.408 is dispositive with regard to the submitted information, we need not address your argument under section 261.201 of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, *no writ*).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Tate Self", written in a cursive style.

Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 171285

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.
Family Advocates
2205 Avenue I, Suite 117
Rosenberg, Texas 77471
(w/o enclosures)